

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

In Re Application Of

MESA POWER GROUP, LLC

Applicant

pursuant to 28 U.S.C. § 1782
For Judicial Assistance in
Obtaining
Evidence from SAMSUNG C&T
AMERICA, INC., KYO IN CHOO AND
JIN GOO KWON For Use in a
Foreign and International
Proceeding

CIVIL ACTION NO. _____

DECLARATION OF LEE ROBERTSON III

Under penalties of perjury, pursuant to 28 U.S.C. § 1746, and being duly authorized, I, Lee Robertson III, declare as follows:

1. I am an executive with Mesa Power Group, LLC ("Mesa Power"). I submit this Declaration in support of Mesa Power's application for an Order, pursuant to 28 U.S.C. § 1782, for leave to serve Samsung C&T America, Inc., Kyo In Choo and Jin Goo Kwon (Kyo In Choo and Jin Goo Kwon are hereinafter referred to as the "Named Persons") with discovery subpoenas in connection with arbitral proceedings against the Government of Canada. I state the following based upon personal knowledge and

investigations of relevant documents and with individuals with knowledge as to the subject matter hereof.

Relevant Parties

2. Mesa Power Group, LLC is a Delaware limited liability corporation dedicated, among other things, to the generation and management of wind energy and wind energy projects. It owns Mesa Wind, LLC ("Mesa Wind"), which in turn owns and controls Mesa AWA, LLC ("Mesa AWA"). Mesa AWA owns and controls four wind farm projects located in Ontario, Canada. All these entities and the underlying wind farm projects are interested persons, affected by the Government of Canada, which is the subject of arbitration proceedings.

3. The Government of Canada is a Party to the North American Free Trade Agreement ("NAFTA"). Canada has principally acted through a provincial government, the Government of the Province of Ontario, and Ontario's wholly-owned and controlled state enterprise, the Ontario Power Authority ("OPA").

4. Samsung C&T America, Inc. identifies itself publicly as the American regional headquarters of Samsung C&T Corporation, a company headquartered in Seoul, in the Republic of South Korea. I refer to Samsung C&T America, Inc. as the American Headquarters. Samsung C&T America, Inc.'s website states that their Renewable Energy Team develops renewable energy business throughout North and South America. Samsung C&T

America, Inc.'s subsidiary, Samsung Renewable Energy Inc. is the owner of the wind development project at issue. Further, Samsung C&T America, Inc.'s website publicly states that "Samsung" announced "a 2.5 GW of Wind and Solar FA Agreement with the Ontario government."

See <http://www.samsungcntamerica.com/G/renewable.asp>, a true and correct copy of which is annexed as Exhibit A. Samsung C&T America, Inc. lists their Business Development contacts as being located in the District of this Court. The Named Persons are the president and treasurer, respectively, of Samsung C&T America, Inc. and are found in this District according to the New Jersey Business Gateway Business Entity Information and Records Service Report, a true and correct copy of which is annexed as Exhibit B hereto.

5. The New Jersey Business Gateway Business Entity Information and Records Service Report also shows that Samsung C&T America, Inc. maintains an office, conducts business and has an Agent for Service of Process at 85 Challenger Road, 6th Floor, Ridgefield Park, NJ 07660. See Exhibit B.

Basis for the Proceedings

6. Mesa Power owns and controls four wind farm projects in the Province of Ontario, Canada. These wind farms were the subject of six applications to obtain long-term Power Purchase Agreements under the Ontario FIT program.

7. On January 21, 2010, the Government of Ontario entered into an undisclosed agreement with Samsung C&T Corporation and Korea Electric Power Corporation (hereinafter referenced as the "Original Korean Consortium"), competitors of Mesa Power. This agreement, known as the *Green Energy Investment Agreement*, resulted insignificant damage to Mesa Power and allowed the Korean Consortium to unfairly obtain better treatment than Mesa Power with respect to power transmission access for projects, including those under the Feed-In-Tariff program, known as the "FIT Program." A third company, Pattern Energy Group LP, also a competitor of Mesa Power, joined the Korean Consortium, all three of which are referenced hereinafter as the "Korean Consortium".

8. The effect of the governmental measures arising from the *Green Energy Investment Agreement* resulted in substantial loss and damage to Mesa Power and to Mesa Power's related business operations.

9. On August 3, 2011, the Government of Ontario, through the OPA, awarded twenty year Power Purchase Agreements to companies controlled by the Korean Consortium, including Samsung Renewable Energy Inc. a subsidiary of Samsung C&T America, Inc.

10. Effectively, Mesa Power was shut out of the market due to the acts of the Government of Ontario, Canada and its dealings with the Korean Consortium.

11. The documents believed to be currently in the possession of Samsung C&T America, Inc. and the Named Persons, which demonstrate the obtaining of benefits by the Korean Consortium to the detriment of Mesa Power, are directly related to the subject matter of the international and foreign tribunal's hearing of the following arbitration claim.

Arbitration Proceedings

12. This application is in support of international arbitration proceedings that have been commenced in October 2011, by Mesa Power. On July 6, 2011, pursuant to NAFTA Articles 1116 and 1119, Mesa Power filed with the Government of Canada, in Ottawa, Canada, a Notice of Intent under the United Nations Commission on International Trade Law ("UNCITRAL") Arbitration Rules to establish an international tribunal, to address violations of Section A of Chapter 11 of the NAFTA. Mesa Power filed a Notice of Arbitration pursuant to NAFTA Article 1120 in Ottawa, Canada, on October 4, 2011. The filing of this Notice formally commenced a NAFTA Arbitration Claim before an international arbitration tribunal created under international law and the NAFTA.

13. A true and correct copy of the Notice of Arbitration is attached as Exhibit C.

14. This arbitration has been commenced pursuant to Article 1120 of the NAFTA. The international NAFTA tribunal

established under this international trade and investment treaty constitutes an international tribunal operating under the Governing law set out in NAFTA Article 1131 and international law, as well as the UNCITRAL Arbitration Rules, which also apply to this arbitration.

The Relevance of Requested Discovery

15. Mesa Power respectfully applies for an Order for the production and preservation of highly important documents that are directly related to the Government of Ontario's actions, and which are believed to be in the possession of Samsung C&T America, Inc. and the Named Persons.

16. The documents are likely to demonstrate a central issue in the dispute, namely, the difference in the level of treatment as between Mesa Power and Samsung C&T America, Inc., and its parent Samsung C&T Corporation. These documents will also reveal the many ways that Samsung C&T America, Inc., the American Headquarters of Samsung C&T Corporation, was provided better treatment, and the criteria that was applied by the Government of Ontario, Canada to Samsung C&T Corporation.

17. The documents sought by Mesa Power relate to direct communications between the Government of Ontario (its ministries, officials, state enterprises and its various agencies) and Samsung C&T Corporation. Records surrounding these communications are believed to be in the possession of Samsung

C&T America Inc.'s New Jersey office as the American headquarters for Samsung C&T Corporation, as well as the Named Persons.

18. The documents requested are specifically described in Exhibit D hereto.

19. Mesa Power applies to depose the following senior executive members of Samsung C&T America, Inc., who are likely to have knowledge of the issues central to this arbitration, and are found within the jurisdiction of this Court:

- a) Kyo In Choo(President)
- b) Jin Goo Kwon (Treasurer)

20. Mesa Power has reason to believe that the political nature of the allegations contained within Mesa Power's Notice of Arbitration may encourage the Government of Ontario to pressure Samsung C&T America, Inc. to remove relevant evidence related to the arbitration and transfer it to Samsung C&T Corporation's offices located in a foreign country outside the jurisdiction of this Court. Mesa Power requests an Order by this Court to ensure that such evidence would be preserved from political interference and prevent either their destruction or removal from the jurisdiction of this Court to offices in foreign countries.

21. Mesa Power also believes this application to be urgent on the basis that Samsung C&T America, Inc. and the Named

Persons are believed to be likely to relocate documents outside of this Court's jurisdiction, for their own reasons and for their own benefit, as a direct competitor of Mesa Power.

22. No previous application for this relief has been made in the United States.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 11th day of November, 2011, at
Dallas, Texas.



Lee Robertson III